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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11
	:
SEARS HOLDINGS CORPORATION, et al.,	: Case No. 18-23538 (RDD)
	:
Debtors.¹	: (Jointly Administered)
-----X	

**DEBTORS' COUNTERSTATEMENT OF ISSUES TO BE PRESENTED
ON APPEAL AND COUNTERDESIGNATION OF ITEMS
TO BE INCLUDED IN RECORD ON APPEAL**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 8009-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), Sears Holdings Corporation and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), submit the following counterstatement of issues to be presented on appeal and counterdesignation of additional items to be included in the record in connection with the appeal of Santa Rosa Mall, LLC. (“**Santa Rosa**”), filed May 14, 2020 [ECF No. 7952], from the *Order Denying Motion of Santa Rosa Mall, LLC for Relief from the Automatic Stay* [ECF No. 7881] (the “**Order**”), entered by this Bankruptcy Court in the above-captioned chapter 11 cases on April 30, 2020, to the United States District Court for the Southern District of New York.

On May 28, 2020, Santa Rosa filed its *Statement of Issues to be Presented and Designation of Items to be Included in the Record on Appeal* [ECF No. 7987] (the “**Designation**”). The Debtors hereby offer the following counterstatement of issues to be presented on appeal.

**COUNTERSTATEMENT OF ISSUES
TO BE PRESENTED ON APPEAL**

1. Did the Bankruptcy Court correctly determine that Santa Rosa’s proposed causes of action against the non-Debtor parties to the January 2019 Settlement and Release Agreement (the “**Settlement Agreement**”) between the Debtors and “Certain Interested Insurers of [Debtors]” (the “**Underwriters**”) and relating to the contract of insurance for the Debtors’ Insurance Policy No. PTNAM1701557 (the “**Contract of Insurance**”) arise out of the matters released in the Settlement Agreement?

2. Did the Bankruptcy Court correctly determine that the Settlement Agreement requires the Debtors to indemnify and defend the Underwriters against Santa Rosa’s proposed causes of action against the Underwriters relating to the Contract of Insurance, even

though the Settlement Agreement was not approved in advance by motion under Fed. R. Bankr. P. 9019?

3. Did the Bankruptcy Court correctly determine that a breach of the post-petition Settlement Agreement by the Debtors would give rise to an administrative expense claim?

4. Did the Bankruptcy Court correctly determine that the automatic stay under 11 U.S.C. § 362 (the “**Automatic Stay**”) is applicable to Santa Rosa’s proposed causes of action against the Underwriters relating to the Contract of Insurance, because allowing those causes of action to go forward would have an immediate adverse effect on the Debtors’ estate?

5. Did the Bankruptcy Court abuse its discretion in holding that Santa Rosa failed to meet its burden to show cause to lift the Automatic Stay, pursuant to 11 U.S.C. §362(d)(1) and based upon the factors listed in *In re Sonmax Indus., Inc.*, 907 F.2d 1280 (2d Cir. 1990), to allow it to pursue its proposed causes of action against the Underwriters relating to the Contract of Insurance?

**COUNTERDESIGNATION OF ITEMS
TO BE INCLUDED IN RECORD ON APPEAL**

The Debtors designate the following additional items to be included in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and/or referenced within such items. By submitting this counterdesignation, the Debtors do not waive, and expressly reserve, their rights to seek to dismiss and otherwise challenge Santa Rosa’s appeal. Further, by submitting this counterdesignation, the Debtors do not waive, and expressly reserve, their rights to rely on any of the documents designated by Santa Rosa in its Designation, including any and all exhibits and documents annexed to and/or referenced within such items.

Filings

ECF No.	Document	Docket Entry Date
3	Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York	10/15/2018
3417	Santa Rosa's Emergency Motion to Compel Compliance with the Court's February 8, 2019 Sale Order	4/29/2019
3468	Notice of Withdrawal of Santa Rosa's (I) Emergency Motion to Compel Compliance with the Court's February 8, 2019 Sale Order, (II) Motion for an Order Shortening Notice with Respect to Emergency Motion to Compel Compliance with the Court's February 8, 2019 Sale Order, and (III) Notice of Hearing	5/1/2019
3877	Third Omnibus Objection of Debtors to Motions for Relief from Stay	5/14/2019
4153	Complaint against Sears Holdings Corporation, Sears, Roebuck de Puerto Rico, Inc. in Adversary case 19-08266 (also filed in Adversary Case No. 19-08266 at ECF No. 1) ²	6/7/2019

Filings in Adversary Case No. 19-08266

ECF No.	Document	Docket Entry Date
8	Debtors' Motion to Dismiss Adversary Complaint	7/15/2019
9	Declaration of Jessie B. Mishkin in Support of Debtors' Motion to Dismiss the Adversary Complaint	7/15/2019
11	Stipulation of Voluntary Dismissal Without Prejudice	8/15/2019

The Debtors reserve their rights to supplement or amend the statement of issues to be presented on appeal and to designate additional items for inclusion in the record in the appeal.

² This document was filed publicly in redacted form; the unredacted version was filed under seal.

Dated: June 11, 2020
New York, New York

/s/ Jacqueline Marcus
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